

GAHC010293132023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/1/2024

GOLAM MOSTOFA SK AND ANR
S/O LATE KURPAN ALI SK, R/O VILL-JOYPUR PART-I, P.O. AND P.S.-
BAGRIBARI, DIST-KOKRAJHAR, ASSAM

2: NURBANU PARBIN
S/O LATE KURPAN ALI SK
R/O VILL-JOYPUR PART-I
P.O. AND P.S.-BAGRIBARI
DIST-KOKRAJHAR
ASSA

VERSUS

SHAJAHAN ALI @ GADU SK AND 5 ORS
S/O LATE AKBAR ALI, VILL- JOYPUR PART-I, P.O. AND P.S.-BAGRIBARI,
DIST-KOKRAJHAR, ASSAM, PIN-783349

2:SAHALOM ALI
S/O LATE AKBAR ALI
VILL- JOYPUR PART-I
P.O. AND P.S.-BAGRIBARI
DIST-KOKRAJHAR
ASSAM
PIN-783349

3:ABIYA BIBI
D/O LATE AKBAR ALI
W/O MD. HASAN SK.
VILL- MAKRIJHORA
P.O.-MAKRIJHORA
P.S.-BAGRIBARI
DIST- KOKRAJHAR
ASSAM
PIN-783349

4:LAILY BIBI
D/O LATE AKBAR ALI
W/O MD. TAGRO SK
VILL-BANIAPARA
P.O. AND P.S.-BILASIPARA
DIST-DHUBRI
ASSAM
PIN-783348

5:ABEDA BIBI
D/O LATE ABBAJ ALI
W/O MD. YASUDDIN ALI
VILL-KHAMER
P.O.-BAGRIBARI
P.S.-BAGRIBARI
DIST-KOKRAJHAR
ASSAM
PIN-783349

6:JARINA BIBI
D/O LATE ABBAJ ALI
W/O MD. FULCHAND ALI
VILL- KHAMER
P.O.-BAGRIBARI
P.S.-BAGRIBARI
DIST- KOKRAJHAR
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M MONDAL

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

07.02.2024

Heard Mr. A C Sarmah, learned senior counsel for the petitioner, assisted by Mr. G. Bharadwaj, Advocate.

This is an application under Article 227 of the Constitution of India challenging

the orders dated 30.10.2023 and 01.12.2023, passed by the learned Civil Judge (Junior Division), Kokrajhar in Title Suit No. 24/2023.

The petitioner, being the defendant in the suit before the trial court prayed for some time to file written statement, but at that time, period of 90 days as prescribed by Order VIII of the CPC had elapsed and on that ground, prayer for seeking time to file written statement was rejected.

I have considered the submission made by the learned senior counsel for the petitioner.

It is a settled position of law that period of 90 days, as mentioned in the Order VIII of the CPC is not mandatory rather, it is a directory one. It appears that the learned trial court did not apply judicial mind while considering the prayer of the petitioner/defendant. Therefore, the impugned order dated 30.08.2023 and 01.12.2023, passed by the learned Civil Judge (Junior Division), Kokrajhar in Title Suit No. 24/2023 are bad in law and set aside. The petitioner shall be given an opportunity by the trial court to file written statement.

With the above, the civil revision petition is disposed of.

JUDGE

Comparing Assistant